

JPA File No.: 05-075
AG Contract No.: KR06-0028TRN
Project No:
Project: State Route 87
Section: Enchanted Lane
TRACS No.: H6110 01C
Budget Source Item No.: 73306,
73307 District Minor

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
MAR-WEN INVESTMENTS, LLD

THIS AGREEMENT is entered into this date March 29, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and MAR-WEN INVESTMENTS, LLD, acting by and through its BOARD OF DIRECTORS (the "Developer"), collectively "the Parties".

I. RECITALS

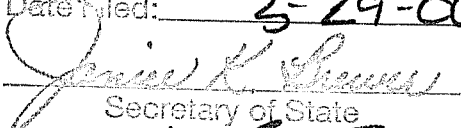
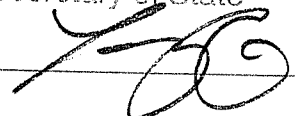
1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. The parties hereto agree to and acknowledge the following conditions: **a)** The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project, as referenced in II.2.c, d., and e; **b)** The parties shall perform their responsibilities consistent with this Agreement; and **c)** Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The State and the Developer agree to share the construction costs of the Developer turnout and turning lanes at Milepost (MP) 304.6, station 732+46.71, which is part of the intersection improvements located on State Route (SR) 87, between MP 304.35 and 305.75, hereinafter referred to as the "Project". The State will design, construct and maintain the Project. The Developer shall be responsible to pay the costs of the new turnout and turning lanes for asphaltic concrete (AC), and aggregate bases (AB) of the turn lanes including the obliteration of existing striping and re-striping of the new turnout and turning lanes at MP 304.6, station 732+46.71 as shown on Exhibit "A", attached hereto and made a part hereof. The State and the Developer shall share costs for the Project, which is an estimated amount of \$1,090,443.00 of which, the Developer will pay an amount not to exceed, \$50,580.00 for the turnout and turning lanes at MP 304.6, station 732+46.71, as shown on Exhibit "A", attached hereto and made a part hereof.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 28105
Filed with the Secretary of State
Date Filed: 3-29-06

Secretary of State
By: 

II. SCOPE OF WORK

1. The State shall:

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the Developer for comments, as appropriate.

b. Advertise for bids and award one construction contract for the Project. Administer contract for the Project and make all payments to the contractor. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

c. Upon completion of the Project, perform the final inspection and notify the Developer in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

d. Upon completion and acceptance of the Project by both parties, provide proper maintenance for the roadway improvements.

e. Upon execution of this Agreement, provide to the Developer an invoice (with itemized list) in an amount not to exceed \$50,580.00, including 15% for contingency.

2. The Developer shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Confer with and obtain written consent from the State on project-related contract modifications.

c. Be responsible for any design consultant and contractor claim for additional compensation caused by Project delays attributable to the Developer.

d. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional cost shall require prior approval of the State. All costs attributable to any engineering change orders requested by the Developer shall be the sole responsibility of the Developer.

e. Be responsible, should the Developer withdraw its proposed plans for whatever reason, for all cost incurred by the State up to the time of withdrawal, unless the reason for the Developer's cancellation is due to the State's failure to comply with its obligations herein.

f. Upon execution of this Agreement and receipt of an invoice from the State, remit to the State an amount not to exceed \$50,580.00, including 15% for construction engineering and contingency.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until completion of said Project and reimbursements; provide, however, that this Agreement, except any provisions for maintenance and electrical energy, which shall be perpetual, may be cancelled at any time prior to the award of a Project construction contract, upon sixty (60) days written notice to the other party.

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the Developer for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.
5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Mar-Wen Investments, LLD
Attn: Howard Losey
HC 31, Box 958
Happy Jack, Arizona 86024
(928)-477-2110
Fax #

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State and Developer under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and Developer at the end of the period for which the funds are available. No liability shall accrue to the State or the Developer in the event this provision is exercised as a result of termination under this paragraph.

9. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

MAR-WEN INVESTMENTS, LLD

By 
HOWARD LOSEY
PRESIDENT

STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations



Office of the Attorney General
State of Arizona

Terry Goddard
Attorney General

Civil Division
transportation section
Direct 602.542.8859

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0028, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED March 14, 2006.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN DAVIS
Assistant Attorney General
Transportation Section